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**THIS DISPOSITION
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Paper No. 10
EWH/krd

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Milacron Inc.

Serial No. 75/625,094

John W. Gregg for Milacron Inc.

Rodney Dickinson, Trademark Examining Attorney, Law Office
112 (Janice O'Lear, Managing Attorney).

Before Hanak, Walters and Chapman, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge:

Milacron Inc. (applicant) seeks to register in typed
drawing form MACHINERY FLEA MARKET for "services of
enabling advertisement for sale of machinery by others on a
global computer network site." The application was filed
on January 22, 1999 with a claimed first use date of
January 4, 1999.

The examining attorney has refused registration on
three grounds. First, the examining attorney contends that

applicant's recitation of services is insufficient because it is not specific enough. Second, citing Section 2(d) of the Trademark Act, the examining attorney contends that applicant's mark, when used in connection with applicant's services, is likely to cause confusion with the mark MACHINERY MARKETING, previously registered in typed drawing form for "retail store services featuring equipment and tools for shaping things out of metal." Registration No. 2,038,144. Third, citing Section 2(e)(1) of the Trademark Act, the examining attorney contends that applicant's mark is merely descriptive of applicant's services.

When the refusal to register was made final, applicant appealed to this Board. Applicant and the examining attorney filed briefs. Applicant did not request a hearing.

In reviewing applicant's recitation of services and applicant's specimens of use, we find that the recitation describes the services with clarity and specificity, and accordingly is an acceptable recitation. Applicant's specimens of use contain the following statements:

"Machinery Flea Market (TM) ... the place to buy and sell new and used machinery and equipment. Machinery Flea Market is a completely free service of [applicant] where you can post or search for new and used machinery and equipment." This

specimen of use constitutes the home page of applicant's website. The specimens of use clearly demonstrate that applicant is offering the service of enabling others to advertise the sale of their machinery on a global computer network site. Accordingly, applicant's recitation of services is adequate, and the refusal to register on this basis is reversed.

Considering next the refusal to register on the basis that the use of applicant's mark in connection with applicant's services is likely to cause confusion with the mark MACHINERY MARKETING for retail store services featuring equipment and tools, we reverse. In any likelihood of confusion analysis, two key considerations are the similarity of the marks and the similarity of the goods or services. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

While both marks contain the descriptive word MACHINERY, the marks are otherwise dissimilar in terms of visual appearance, pronunciation and meaning. The differences between FLEA MARKET and MARKETING in terms of visual appearance and pronunciation are obvious. Moreover, in terms of meaning, the two marks are clearly different. A "flea market" is defined as "an outdoor bazaar dealing mainly in cheap, secondhand goods." The word "marketing"

is defined as "all business activity involved in the moving of goods from the producer to the consumer, including selling, advertising, packaging, etc." Webster's New World Dictionary (2d ed. 1970). In short, the mark MACHINERY MARKETING evokes images of sophisticated selling. The mark MACHINERY FLEA MARKET evokes images of decidedly less sophisticated selling that usually involves secondhand goods.

In addition to the differences in the two marks, it should also be made clear that registrant's services and applicant's services are different. Registrant's services are retail store services featuring equipment and tools. Applicant's services consist of enabling others to advertise the sale of their machinery. In other words, registrant sells machinery, and applicant does not. Rather, the customers of applicant's services, as described in its application, are entities which in turn engage in the sale of machinery.

In sum, given the differences in the marks and the differences in the services, we find that there exists no likelihood of confusion resulting from the contemporaneous use of MACHINERY FLEA MARKET and MACHINERY MARKETING.

Finally, we turn to the question of whether applicant's mark is merely descriptive of applicant's

services as described in its application. In this regard, it is clear that the mere descriptiveness of a mark is not judged in the abstract, but rather its judged in relationship to the goods or services as described in the application. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978).

The examining attorney has made of record numerous excerpts of stories appearing in the NEXIS database showing that various companies sell a wide array of goods and services via computers in what are referred to as "on-line flea markets." However, applicant's recitation of services does not include the sale by applicant of machinery on-line. Rather, applicant's recitation of services is limited to enabling others to advertise for sale their machinery to potential buyers. While we recognize that the question of whether applicant's mark is merely descriptive of applicant's services as described in its application is a close one, we are obligated in such situations to resolve doubts in favor of applicant. In re Gourmet Bakers, Inc., 173 USPQ 565 (TTAB 1972). Accordingly, the refusal to register on the basis that applicant's mark is merely descriptive of applicant's services is likewise reversed.

Decision: The refusal to register on all three grounds is reversed.

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